

MAINE HUMAN RIGHTS COMMISSION

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Complainant
v.

Respondent

I. COMPLAINANT'S CHARGE:

Complainant alleges that Respondents subjected her to a hostile working environment, failed to make reasonable accommodations, and terminated her employment because of her disabilities (major depression, post traumatic stress disorder, anxiety, carpal tunnel syndrome, deformed thumb).

II. RESPONDENT'S ANSWER:

Respondent denied knowing that Complainant had disabilities, denied that she asked for accommodations, denied that there was a hostile working environment, and stated that Complainant quit voluntarily.

III. JURISDICTIONAL DATA:

- 1) Dates of alleged discrimination: October 23, 2007 to February 18, 2008.
- 2) Date complaint filed with the Maine Human Rights Commission: June 23, 2008, amended January 15, 2009.
- 3) Respondent employs about 50 employees and is subject to the Maine Human Rights Act, the Americans with Disabilities Act, as well as state and federal employment regulations.
- 4) Complainant is represented by Kristin Aiello, Esq. Respondent is represented by Anne-Marie Storey, Esq.
- 5) Investigative methods used: Review of the written materials provided by the parties, fact finding conference, interviews.

IV. DEVELOPMENT OF FACTS:

- 1) The parties and issues in this case are as follows:
 - a) The Complainant, was hired on about October 23, 2007 to be a crew member at the Respondent in Old Town, Maine. Her last day of work was February 18, 2008.
 - b) Complainant was diagnosed with major depression, post traumatic stress disorder, and anxiety about six or seven years ago. Her mental conditions significantly impair her memory and her ability to be alone at home or in public. She is much more sensitive than the average person to conflict and is subject to panic attacks. She is sometimes paranoid. Prior to her employment at Respondent, Complainant had developed difficulty grasping and lifting heavy things and was seeing a doctor for these symptoms. Complainant has had a deformed right thumb since birth.
 - c) Respondent LLC was the owner/operator of Respondent franchises in Old Town and Houlton, Maine. Ms. Owner works full time as a manager at the Old Town restaurant and Mr. Owner traveled to the Houlton restaurant about twice a week.
 - d) Ms. AB was a crew member at the time of these events and at the time of the fact finding conference was the Manager of the Old Town location.² Respondents retained counsel after the conference.
 - e) Complainant alleges that Respondent subjected her to a hostile working environment, failed to make reasonable accommodations, and terminated her employment because of her disabilities (major depression, post traumatic stress disorder, anxiety, carpal tunnel syndrome, deformed thumb).
 - f) Respondent denied knowing that Complainant had disabilities, denied that she asked for accommodations, denied that there was a hostile working environment, and stated that Complainant quit voluntarily.
- 2) The following concerns Complainant's job interview with Respondent:
 - a) (Complainant) Her interview was with Ms. Owner. They sat down, had coffee, and discussed her employment history. She told Ms. Owner that she had hurt her arms and wrists while working as a Certified Nursing Assistant but that she did not expect to have any difficulties performing the duties of a crew member. She showed, or Ms. Owner noticed, her deformed right thumb. She told Ms. Owner that this affected her

² Respondent explained that Ms. AB came to the fact finding conference to learn how to handle Human Rights Commission complaints on behalf of Respondent in the future.

grip with her right hand but that she had learned to compensate for this. Ms. Owner did not express any concerns at that time.

- b) (Ms. Owner) The only thing Complainant mentioned was her right thumb, not her arms and wrists. She showed Complainant the job description but did not go through it with her point by point. Complainant said that her thumb would not be a problem, and she did not expect that it would.
- 3) The following concerns an incident that occurred on or about Complainant's first day of work:
- a) (Complainant) She was learning to operate the cash drawer and Mr. Owner yelled at her for not learning fast enough. He was very angry and was very intense. He yelled, "Can you tell me what is f—king wrong here?" Her post traumatic stress disorder (PTSD) is caused by a man who violently attacked her and she can't tolerate it when men yell at or around her. She had a panic attack when Mr. Owner yelled. She had to leave the counter and go out back. She went and found Ms. Owner and told her about her mental condition. She explained how it made her feel when Mr. Owner yelled at her. Ms. Owner understood and explained her situation to Mr. Owner, who apologized.
 - b) (Mr. Owner) He does not remember yelling at Complainant while she was in training. There are only 5 or 6 crew members in the Old Town location to cover 7 or 8 positions. He "expedites" when the restaurant is busy, directing crew members to the tasks that need to be done. The restaurant is busy and noisy so he has to raise his voice to be heard. He remembers Complainant telling him that it makes her upset when a man raises his voice because she was violently attacked by a man. He did not swear and did not direct anything toward her. He does not use the "f" word at work.
 - c) (Ms. Owner) Complainant came out back and spoke to her. She seemed anxious and upset about something Mr. Owner said. Complainant told her about her past (the violent attack). She took Mr. Owner aside and asked him to take this into account when he spoke to Complainant. Mr. Owner has to raise his voice to be heard above the din. He never uses the "f" word at work.
 - d) It is unclear to this investigator why Mr. Owner needs to raise his voice to be heard, given that crew members wear and communicate using head sets. Crew members interviewed (MC and KS) said that Mr. Owner did not need to raise his voice to be heard.
- 4) The following concerns a doctor's appointment in January 2008:
- a) (Complainant) She had a doctor's appointment toward the end of January 2008. She gave the Owners two week's notice of the appointment and told them the appointment

was to see her doctor about her arms and hands, which were getting worse. She wrote her request on a white board, which is what she was told to do. Mr. Owner put her on the schedule to work the day of her appointment. She spoke to him about the schedule and he said she would have to get someone else to cover her shift. She could not find someone to cover for her so she had to reschedule the doctor's appointment.

- b) (Owners) They use a "time off" book in the office for crew members to request a specific day off, not the white board. If Complainant wrote a note on the white board. Mr. Owner simply did not see it when he was making out the schedule.
 - c) Crew members interviewed (MC and KS) say that the Owners allowed time off for doctor's appointments.
- 5) During the appointment that was rescheduled to February 4, 2008, Complainant told her doctor about her symptoms of "left arm and hand numbness, tingling and pain" and he began working her up for a peripheral neuropathy. The doctor wrote a letter addressed to Mr. Owner in which he requested that Complainant's duties be limited to light duty:

"This includes lifting coffee pots with two hands (I recommend that she wear an oven mitt on her right hand to help support the coffee pot), not carrying more than 10 pounds, and avoiding circumstances where she is exposed to cold as this exacerbated her symptoms. She will likely benefit from decreasing her hours as well."

- 6) The parties provided the following with regard to the doctor's note and Complainant's work restrictions:
- a) (Complainant) She was nervous about Mr. Owner's reaction but she handed the doctor's note to him a day or two after she got it from her doctor. He read it, laughed, and threw it back at her and said, "It's your job, not a doctor's office."
 - b) (Mr. Owner) This is not true. She never gave him or showed him the doctor's note.

Wrist brace

- c) (Complainant) She wore a wrist brace (splint) to protect her left wrist. Mr. Owner told her the brace did not conform to the uniform policy and asked her how long she had to wear them. He said negative things about the brace but he did not tell her she could not wear it. She wore a stiff brace at first then switched to a softer brace that was easier to work in. She wore a brace every day at all times except, e.g., to wash her hands.
- d) (Mr. Owner) One day he noticed her wearing wrist braces. She told him that the doctor wanted her to wear them because of tingling and weakness in her wrist. She said that the doctor thought that would help heal her arms. He was fine with that. Later,

Complainant told him she couldn't pour coffee with the braces and that she was not going to wear them at work anymore. She said she would tell her doctor that she would wear them at all other times, just not at work. She took them off and never wore them at work again.

- e) Ms. AB saw Complainant wearing a wrist brace one day, but not after that. Other crew members did not recall seeing her wear one.

Oven mitt

- f) (Complainant) She asked if she could keep an oven mitt close at hand by attaching it to her waist with a retractable coil leash. He told her to take it off, that it looked "gay."
- g) (Mr. Owner) This is not true. He does not call things "gay" as a derogatory term.
- h) Another crew member (MC) said that Complainant did not use an oven mitt to lift coffee pots.

Reduced hours

- i) (Complainant) They refused to reduce her hours even though other crew members wanted to work more hours.
- j) (Mr. Owner) Complainant told him that the doctor wanted her to reduce her hours but she said she couldn't afford it. Her fiancé was out of work and she needed to work as much as possible.
- k) (Schedules) Complainant was scheduled to work 38.5 hours during the week of February 4. She was scheduled to work 40 hours per week during the weeks of February 11 and 18.

Exposure to cold

- l) (Complainant) She was assigned her to work at the drive-through window in the cold. She does not recall how many times she was assigned to that position. She did not complain because she tried to avoid conflict.
- m) (Owners) She worked at the drive-through window and seemed happy there. She never asked for a different job assignment and never said it caused her any difficulty or hardship. She had the option of wearing a uniform coat and gloves. The drive-through window is the least physically demanding job in the store. Complainant could not work in the soup and sandwich position because she could not hold the knife to cut bread.

- n) (Crew Member KS) There are other positions that do not involving holding a knife to cut bread and are not at the drive through window, including front counter and cashier. (The drive-through window positions included taking orders/delivering food, drive-through beverage, and cash for drive-through.)
 - o) (Complainant) Throughout the winter months, she was sent outside in the cold to pick up cigarette butts, wash the windows, and empty trash barrels without a warm coat, hat, boots and gloves, because of the uniform policy.³ She specifically asked permission of Ms. Owner to wear warm gloves and a winter coat and was told she could only wear a rubber (plastic) glove and a thin Respondent jacket. At times, she wore three Respondent jackets in an attempt to stay warm. She saw another crew member (TC) working outside wearing warm clothes. She saw another crew member (M) working outside without warm clothes.
 - p) (Owners) Outside clean-up needs to be done each shift and the task is rotated between crew members. The crew is encouraged to wear warm clothing appropriate for Maine winters. They are asked to wear a thin Respondent jacket over their winter coat and a big rubber glove over their warm gloves, to protect their clothing from trash. They never told Complainant she could not wear warm clothes and never saw her outside without warm clothes.
 - q) Other crew members said that employees could wear warm clothes to work outside if they wanted to, and were not told that it violated the uniform policy.
- Lifting
- r) (Complainant) Management did not provide her with any help with heavy lifting, e.g., the ice coffee dispenser, large bags of sugar, taking out trash, and mopping. She asked for and got help from other crew members to perform these tasks.
 - s) (Owners) They use teamwork to accomplish all tasks that need to be done. Complainant never had to lift anything heavy.
- 7) On February 12, 2008, Complainant saw a specialist and was diagnosed with carpal tunnel syndrome. The specialist recommended that she continue wearing braces. She wore a flexible brace at work and stiff brace to bed at night. The specialist told her she would likely need surgery.

³ The uniform policy does not specify what items of clothing an employee may wear while working outdoors.

- a) (Complainant) She told Mr. Owner about her doctor's visit and his recommendations. He wasn't happy about it. He asked her again how much longer this was going to continue.
Mr. Owner continued yelling, using the "f" word, which made her very uncomfortable.
 - b) (Mr. Owner) denied these allegations.
- 8) Concerning Complainant's separation from employment:
- a) (Complainant) On the morning of Monday, February 18, she was serving a customer at the drive through window. The customer asked her what kind of bagels they had. As she began to answer, a coworker (KS) interrupted to answer for her. She told KS, nicely, that she was "all set," she knew what bagels they had and did not need his help.⁴
 - b) (Complainant) A few minutes later, Ms. Owner came over, got in her face and yelled, "What is going on, give the kid a break!" Ms. Owner was so angry she was spraying saliva when she spoke. Complainant began to cry. Ms. Owner was yelling at her so loud that customers and other crew members could hear.⁵ She felt threatened and left the area in an effort to de-escalate the situation.
 - c) (Complainant) She thought that she could have a calm discussion of the problem if they spoke privately out back. Instead, Ms. Owner followed her and continued screaming at her, calling her a "baby" and telling her to "get over it." Complainant took off her Tim Hortons hat, put it in the bin, got her coat and started out the door. Ms. Owner followed her to the door and screamed, "Go and good luck finding another f—king job with that hand!" She assumed that she was fired.
 - d) (Reporting Officer narrative) Complainant went from Tim Hortons to the police department and reported what had just happened to an officer. The officer recommended that she contact headquarters for Tim Hortons and make them aware of management's way of dealing with employees.
 - e) (Ms. Owner) Complainant snapped, "I don't need your help" in a nasty way to crew member KS, who was just trying to help. Her outburst was heard by four other staff members wearing headsets, including Ms. Owner. KS is a good kid and he was embarrassed. She waited a minute⁶ until business at the drive through slowed and then

⁴ (Crew Member KS) Ms. Patti was not happy that he spoke up but he was not upset about the incident.

⁵ (Crew Member KS) He was busy working and did not hear or see much of the discussion between Ms. Patti and Ms. Owner.

⁶ A witness statement from TC indicates that more than 15 minutes went by before Ms. Owner went out to speak to Ms. Patti, and only after TC had spoken to Ms. Patti about the incident, and complained to Ms. Owner about the way Ms. Patti had treated KS.

went to speak to Complainant. She approached Complainant in a very quiet, calm, professional manner and asked her what happened. Complainant was very angry and stated that she did not need help from KS. She told Complainant that they all help each other, as needed, to get the job done efficiently. Complainant became more and more agitated as she tried to reason with her. Complainant started speaking very rapidly, her arms were flying, and she accused Ms. Owner of taking KS's side. Ms. Owner told Complainant that her behavior was unacceptable and told her to lower her voice and discuss this as two adults. Complainant replied, "You're the biggest baby I ever met!" and stormed off to the back of the store. Complainant continued with childish insults, ran out the back door, got in her truck, and sped off. She assumed that Complainant quit and crossed her name off the schedule for the rest of the week.

- f) (Ms. Owner) She handled this counseling session in a very appropriate way. She wasn't loud. Complainant escalated the discussion into a confrontation.
 - g) (TC) In a written statement submitted by Respondent, TC wrote that he saw Complainant storm into the kitchen followed by Ms. Owner, who was furious and demanding that Complainant not "use that kind of language" in the storefront.
 - h) (Ms. Owner) "I have the right to be furious in my store when someone acts the way she was acting." "I can maintain professionalism" even when she is angry. "I'm a very calm mannered person."⁷
 - i) (Mr. Owner) He was in the office out back and did not hear or see anything.
 - j) (Ms. AB) She was working at the soup and sandwich position on the morning of February 18. She heard Complainant tell KS that "It's my job" and "I don't need your help." She could not hear what Ms. Owner said to Complainant when she went over to speak to her. She heard an outburst and saw Complainant leave the front of the store. She did not hear what when on out back.
- 9) Other evidence of abusive statements made by Owners while terminating employees and when employees quit due to alleged discrimination:
- a) CH said that in 2005-2006, Mr. Owner told her that she was costing him money and that if she had one more doctor's note, he would have to fire her. She said that he said he did not like "disability people" or "welfare people" and refused to complete paperwork that would allow her to get more Social Security benefits. Mr. Owner said he did not want people "like her" around and that on June 1, 2006, when Mr. Owner terminated her

⁷ During the fact finding conference, Ms. Owner made frequent displays of exasperation when Complainant made statements that she disputed.

employment he said "Get out of here, I'm not running an asylum, go live off welfare." See E06-0366, *Carrie Hinkling v. Tim Hortons*.

- b) AT said that on about January 10, 2007, Mr. Owner terminated her stating, "Why don't you go on welfare? That's all you goddamn Indians are good for." See E07-0336, *Amber Tompkins v. Coffee Couple, LLC*.
- c) In July 2007, an employee complained to Respondent, the franchisor, that Mr. Owner made threats and kicked her boyfriend when he went to pick up her last paycheck.
- d) AV said that on about October 29, 2008, Mr. Owner called him a "no good white f--king nigger" after AV complained about wages improperly withheld and said that he was going to quit. Mr. Owner admitted making an inappropriate comment but asserts that it was an angry response to offensive and obscene language used by AV. See E08-0646, *Verville v. Coffee Couple, LLC and Boyle*, report issued on even date.

10) Miscellaneous:

- a) Respondent does not have a written policy of providing for reasonable accommodations for employees with disabilities. Respondent has a harassment policy that prohibits harassment based on physical, but not mental, disability.
- b) (Owners) Complainant was a good worker; she worked hard and got along well with the rest of the staff.
- c) (Complainant) She was not looking for another job. She enjoyed working at Respondent. She liked the hours and her co-workers. She would drop in on her days off to have coffee and chat. Mr. Owner made her uncomfortable but he wasn't always there.
- d) (Owners) They have a daughter with Down syndrome and do not discriminate on the basis of disability.
- e) (Complainant) Mr. Owner once said something to the effect of, "[Ms. Owner] almost killed our first kid, I'll be f--king damned if she kills this one," referring to their daughter with Down syndrome. He also referred to Ms. Owner as a "whore."
- f) (BC) worked for Respondents from August 15, 2007 to June 24, 2008. She heard Mr. Boyle use the "f" word when he was frustrated. She heard Ms. Boyle call a customer a "bastard" after the customer called Mr. Boyle an "asshole."

11) Respondents denied all of the claims against them (except that Mr. Owner admits that he called AV a "white nigger").

V. ANALYSIS:

- 1) The Maine Human Rights Act requires the Commission to “conduct such preliminary investigation as is necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred.” 5 M.R.S.A. § 4612(1)(B). The Commission interprets this standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
- 2) The Maine Human Rights Act provides that it is unlawful to discriminate in the terms, conditions or privileges of employment or any other matter directly or indirectly related to employment, or to terminate an employee because of physical or mental disability. *See* 5 M.R.S.A. § 4572(1)(A).
- 3) Unlawful discrimination includes “[n]ot making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless the covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the covered entity.” 5 M.R.S.A. §§ 4553(2)(E), 4572(2).
- 4) The Maine Human Rights Act, 5 M.R.S.A. § 4553-A(1)(A)(2) defines “physical or mental disability,” in relevant part, as a physical or mental impairment that significantly impairs physical or mental health. “Significantly impairs physical or mental health” means having an actual or expected duration of more than 6 months and impairing health to a significant extent as compared to what is ordinarily experienced in the general population. 5 M.R.S.A. § 4553-A(2)(B).
- 5) Major depressive disorder is a disability without regard to severity. 5 M.R.S.A. § 4553-A(1)(B).
- 6) Here, Complainant, , alleged that Respondent, Coffee Couple, LLC d/b/a Respondent of Old Town, subjected her to a hostile working environment, failed and refused to provide her with reasonable accommodations, and terminated her employment due to her mental and physical disabilities.
- 7) Respondent denied knowing that Complainant had disabilities, denied that she asked for accommodations, denied that there was a hostile working environment, and stated that Complainant quit voluntarily.

Reasonable Accommodations

- 8) To establish a reasonable accommodation claim, it is not necessary for Complainant to prove intent to discriminate on the basis of disability. *See Higgins v. New Balance Athletic Shoe, Inc.*,

194 F.3d 252, 264 (1st Cir. 1999). Rather, Complaint must show (1) that she is a "qualified individual with a disability" within the meaning of the MHRA; (2) that Respondent, despite knowing of Complainant's physical or mental limitations, did not reasonably accommodate those limitations; and (3) that Respondent's failure to do so affected the terms, conditions, or privileges of Complainant's employment. *See id.*

- 9) The term "qualified individual with a disability" means "an individual with a physical or mental disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires." 5 M.R.S.A. § 4553(8-D). Examples of "reasonable accommodations" include, but are not limited to, making facilities accessible, "[j]ob restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, [and] the provision of qualified readers or interpreters. . . ." 5 M.R.S.A. § 4553(9-A).
- 10) In proving that an accommodation is "reasonable," Complainant must show "not only that the proposed accommodation would enable her to perform the essential functions of her job, but also that, at least on the face of things, it is feasible for the employer under the circumstances." *Reed v. Lepage Bakeries, Inc.*, 244 F.3d 254, 259 (1st Cir. 2001). It is Respondent's burden to show that no reasonable accommodation exists or that the proposed accommodation would cause an "undue hardship." *See Plourde v. Scott Paper Co.*, 552 A.2d 1257, 1261 (Me. 1989); Me. Hum. Rights Comm'n Reg. 3.08(D)(1) (July 17, 1999). The term "undue hardship" means "an action requiring undue financial or administrative hardship." 5 M.R.S.A. § 4553(9-B).
- 11) Generally, Respondent is only required to provide a reasonable accommodation if Complainant requests one. *See Reed v. Lepage Bakeries, Inc.*, 244 F.3d at 261.
- 12) Here, the evidence shows that Complainant is a qualified individual with a disability. She has major depression, a *per se* disability, as well as post traumatic stress disorder (PTSD) and anxiety which are long-standing and significant mental disabilities. She also has long-standing and significant physical disabilities including carpal tunnel syndrome and a deformed right thumb. Notwithstanding these impairments, Complainant was able to perform her crew position for Respondent with reasonable accommodations.
- 13) Complainant alleged that Respondent did not reasonably accommodate her disabilities, and would not even accept a note from her doctor requesting accommodations. Respondent knew that Complainant had a deformed thumb and that she had PTSD and anxiety but denied that Complainant handed in a doctor's note for her carpal tunnel syndrome or that she asked for accommodations that were not provided. Analysis of the documents and testimony leads to the conclusion that some accommodations were provided, and others were not.

14) Reasonable accommodations provided and instances in which there is insufficient evidence to show that a reasonable accommodation was denied:

- a) On one of her first days at work, Owners agreed to accommodate Complainant's PTSD and anxiety by not yelling at her and using abusive language. Owners indicated that they understood her situation and, in principle, agreed not to yell at her.
- b) Complainant was not required to work the soup and sandwich position which she could not perform because of her deformed thumb.
- c) Complainant alleged that Owners refused to give her the day off for a doctor's appointment at the end of January 2008. However, it is more likely that Mr. Owner did not notice her request because it was written on a white board and not in the "time off" book. Complainant and other crew members were given time off for medical appointments.
- d) Complainant was restricted to lifting no more than 10 pounds and alleged that Owners did not provide her with any help with heavy lifting. However, she conceded that other crew members were always available to help her lift. The alleged failure to accommodate in this instance did not affect the terms, conditions, or privileges of Complainant's employment.
- e) Complainant wore a stiff or flexible wrist brace, as needed, to protect her left wrist. She alleges that Mr. Owner made disparaging comments about it (see below) but she was nevertheless able to wear the brace at work.
- f) Complainant alleged, and Owners denied, that she was forbidden from wearing warm clothes outside in the winter while cleaning up the premises and taking out the trash, an accommodation she needed because of her carpal tunnel syndrome. She stated that the reason given was that a warm coat, hat, boots and gloves violated the uniform policy. However, the uniform policy does not specify what items of clothing may be worn by employees while working outside and Complainant saw at least one other crew member wearing warm clothes. Crew members interviewed said that Owners never told the crew they could not wear warm clothes outside. It is possible that Complainant misunderstood Ms. Owner's instructions, which were to wear a Respondent's jacket over her winter coat and rubber (or plastic) gloves over her warm gloves to protect her clothing. Complainant's desire to avoid conflict might have kept her from asking Ms. Owner for clarification.

15) Reasonable accommodations denied:

- a) Complainant saw her doctor on February 4, 2008 and was given a letter addressed to Mr. Owner requesting several accommodations including the use of an oven mitt to lift coffee pots, limited exposure to the cold and decreased hours.
- b) Complainant gave the note to Mr. Owner a day or two after receiving in. He read it, laughed, and threw it back at her stating, "It's your job, not a doctor's office." Mr. Owner denied this, but the allegation is found to be credible. Complainant's claim is strikingly similar to that of CH who, in 2006, alleged that Mr. Owner told her that if she had one more doctor's note, he would have to fire her and told her that he did not like "disability people."
- c) Respondent would not let Complainant keep an oven mitt close at hand by attaching to her waist using a retractable coil leash. She needed to use the oven mitt for wrist support while lifting the coffee pot, but was denied this support.
- d) Respondent did not limit Complainant's exposure to the cold. She was routinely assigned to the drive-through window even though there were other positions she could work (e.g., front counter and cashier).
- e) Respondent refused to reduce Complainant's hours and continued having her work a full 40 hour week until she was terminated on February 18, 2008. Respondent states that Complainant did not want her hours reduced because she needed the income, but the Respondent is not more credible than Complainant regarding this issue.

Termination

- 16) Because there is no direct evidence of discrimination, the analysis of this case will proceed utilizing the burden-shifting framework following *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973). See *Maine Human Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1263 (Me. 1979).
- 17) First, Complainant establishes a prima-facie case of unlawful discrimination by showing that: (1) she belonged to a protected class, (2) she performed her job satisfactorily, (3) her employer took an adverse employment decision against her, and (4) her employer continued to have her duties performed by a comparably qualified person or had a continuing need for the work to be performed. See *Santiago-Ramos v. Centennial P.R. Wireless Corp.*, 217 F.3d 46, 54 (1st Cir. 2000); *Cumpiano v. Banco Santander Puerto Rico*, 902 F.2d 148, 155 (1st Cir. 1990); cf. *City of Auburn*, 408 A.2d at 1261.
- 18) Once Complainant has established a prima-facie case, Respondent must (to avoid liability) articulate a legitimate, nondiscriminatory reason for the adverse job action. See *Doyle v. Department of Human Services*, 2003 ME 61, ¶ 15, 824 A.2d 48, 54; *City of Auburn*, 408 A.2d at 1262. After Respondent has articulated a nondiscriminatory reason, Complainant must (to

prevail) demonstrate that the nondiscriminatory reason is pretextual or irrelevant and that unlawful discrimination brought about the adverse employment action. *See id.*

Complainant's burden may be met either with affirmative evidence of pretext or by the strength of Complainant's evidence of unlawful discriminatory motive. *See City of Auburn*, 408 A.2d at 1262, 1267-68.

- 19) In order to prevail, Complainant must show that she would not have suffered the adverse job action but for her membership in the protected class, although protected-class status need not be the only reason for the decision. *See City of Auburn*, 408 A.2d at 1268.
- 20) Here, Complainant established a prima facie case by showing that she has mental and physical disabilities, she performed her job satisfactorily, she was treated less favorably because of her disability and terminated, and Respondent had a continuing need for her work as a crew member to be performed.
- 21) Respondent denied that it treated Complainant less favorably because of her disability and stated that Complainant was not fired, she quit.
- 22) At the final stage of analysis, the evidence supports Complainant's claim of disability discrimination and unlawful termination, with reasoning as follows:
 - a) There is credible evidence that Mr. Owner disparaged Complainant's disabilities by refusing to accept her doctor's note, expressing impatience about her need to wear a wrist brace, and telling her that wearing an oven mitt attached to her waist was "gay."
 - b) In addition, as noted above, Owners refused to confine Complainant's job assignments to positions that did not expose her to the cold and refused to reduce her hours to accommodate her carpal tunnel syndrome.
 - c) On February 18, 2008, Complainant was given no choice but to leave the work site and was terminated or constructively discharged by Respondent. That morning, she told a co-worker that she did not need his help, but her comment did not even upset him. The next thing she knew, Ms. Owner came at her in a rage, with eyes wide and saliva flying. Ms. Owner yelled at Complainant in front of other, which was humiliating. Because of her PTSD and anxiety, Complainant had to leave her work station. Ms. Owner followed her out back, furious, calling her a "baby" and telling her to "get over it." Complainant took off her hat, put it in the bin, put on her coat and walked out. As she left, Ms. Owner called after her, "Go and good luck finding another f—king job with that hand!"
 - d) Respondent's animus toward Complainant as a person with disabilities is obvious from Ms. Owner's parting words.

- e) Complainant's testimony regarding this incident is bolstered by evidence that Owners have made similar abusive statements to other employees who were being terminated or forced to quit. A crew member who witnessed the incident described Ms. Owner as "furious." Ms. Owner's denial that she was abusive is undermined by her behavior at the fact finding conference, where she could not contain her feelings.
- f) Reasonably, Complainant assumed that she was fired. She was so frightened by Ms. Owner's rage that she immediately drove to the police department and reported the harassment.
- g) If one concludes, as did Respondent, that Complainant quit when she walked out in the middle of her shift, then her claim is that she was constructively discharged.
- h) It is a violation of the Maine Human Rights Act if, although not formally terminated, an employee has no reasonable alternative to resignation because of intolerable working conditions. *See King v. Bangor Federal Credit Union*, 611 A.2d 80, 82 (Me. 1992). "The test is whether a reasonable person facing such unpleasant conditions would feel compelled to resign." *Id.* In addition, "an employee can be constructively discharged only if the underlying working conditions were themselves unlawful (i.e., discriminatory in some fashion)." *Sweeney v. West*, 149 F.3d 550, 557-558 (7th Cir. 1998).
- i) Here, it is clear that Complainant was subjected to abusive behavior because of her disability, and that she had no reasonable alternative to resignation.

Hostile Work Environment

- 23) Harassment on the basis of disability is a violation of Section 4572 of the Maine Human Rights Act. Unwelcome comments, jokes, acts and other verbal or physical conduct related to physical or mental disability constitute harassment on the basis of physical or mental disability when such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. Me. Hum. Rights Comm'n Reg. § 3.08(I)(1) (July 17, 1999).
- 24) "Hostile environment claims involve repeated or intense harassment sufficiently severe or pervasive to create an abusive working environment." *Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 23, 824 A.2d 48, 57.
- 25) The fact that the conduct complained of is unwelcome must be communicated directly or indirectly to the perpetrator of the conduct. *See Lipsett v. University of Puerto Rico*, 864 F.2d 881, 898 (1st Cir. 1988).
- 26) The facts in this case support Complainant's claim that she was subjected to a hostile work environment based on her disabilities. Mr. Owner responded to her doctor's requesting

accommodations by laughing, throwing the note back at her, and making a derisive comment ("It's your job, not a doctor's office"). Respondent would not let Complainant keep an oven mitt close at hand and mocked her for asking by calling it "gay." Respondent refused to limit Complainant's exposure to the cold by assigning and assigned her to the drive-through window, in spite of the discomfort it caused her.

- 27) On Complainant's last day of work, Ms. Owner confronted Complainant aggressively about a minor problem, knowing that Complainant had PTSD and was subject to panic attacks. When, predictably, Complainant was upset and overwhelmed by the conflict and retreated out back, Ms. Owner pursued her, berated her for having a mental disability (called her a "baby" for being upset), and degraded her for having a physical disability ("good luck finding another f—king job with that hand!") This incident alone was enough to create a hostile working environment. It is not necessary that the inappropriate conduct occur more than once so long as it is severe enough to cause the workplace to become hostile or abusive. *Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 23, 824 A.2d 48, 57; *Nadeau v. Rainbow Rugs*, 675 A.2d 973, 976 (Me. 1996).

VI. RECOMMENDATION:

For the reasons stated above, it is recommended that the Maine Human Rights Commission issue the following finding:

- 1) There are **Reasonable Grounds** to believe that the Respondent, Coffee Couple, LLC d/b/a Respondent, subjected Complainant, to disability harassment, denied her reasonable accommodations and terminated her employment because of her disabilities;
- 2) Conciliation should be attempted in accordance with 5 M.R.S.A. § 4612(3).

Patricia E. Ryan, Executive Director

Barbara Lelli, Chief Investigator